

EXHIBIT G

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LEONARD EDWARD DAVIS,) Docket No. A 05-CA-464 SS
ET AL)
vs.) Austin, Texas
KOPPERS INDUSTRIES,)
INC., A FOREIGN)
CORPORATION, ET AL) October 6, 2006

TRANSCRIPT OF ALL PENDING MATTERS
BEFORE THE HONORABLE SAM SPARKS

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25 Proceedings recorded by mechanical stenography, transcript
produced by computer.

13:11:08

13:11:08 1 THE COURT: 05-CA-464, Davis, et al vs. Koppers
13:53:48 2 Industries, et al.

13:53:52 3 I'll have announcements.

13:53:56 4 MR. HANKINS: Grover Hankins for the plaintiffs, your
13:53:58 5 Honor. And we have Larry Wright, who's not been introduced to
13:54:00 6 the Court. He's new to the case. And Dwight Jefferson.

13:54:10 7 MR. KURFIRST: Your Honor, Len Kurfirst and Susan
13:54:12 8 Burnett on behalf of Koppers, Inc.

13:54:14 9 MS. SPACAPAN: Lise Spacapan for Dow Chemical, your
13:54:14 10 Honor.

13:54:20 11 MR. COWEN: David Cowen, C-O-W-E-N, on behalf of B and
13:54:22 12 SF Railway Company, your Honor.

13:54:24 13 MR. NORRIS: Josh Norris on behalf of Vulcan Materials.

13:54:28 14 MR. LEMMON: Your Honor, Steve Lemmon for Monsanto.

13:54:30 15 MR. HILL: Frank Hill for Dow Chemical.

13:54:40 16 THE COURT: All right, counsel. Here's where we are on
13:54:44 17 this lawsuit. It was filed on June 16, 2005, sixteen months ago.
13:55:08 18 Answers in September, early September filing motions for judgment
13:55:14 19 on the pleadings, all overruled in October of 2005 without
13:55:20 20 prejudice to refileing. We met in October on proposed discovery
13:55:30 21 plans, decided we couldn't go forward until there was an amended
13:55:36 22 complaint filed. An amended complaint filed in December of 2005.
13:55:44 23 And then, at that time, we had 602 plaintiffs. Then, rather than
13:55:56 24 dismiss the case, I required individual pleadings.

13:56:00 25 I went along with plaintiffs' counsel on attempting to

13:56:04 1 get sufficient information to classify and see what we could do
13:56:08 2 with the number of people. I drafted, because the parties
13:56:14 3 couldn't get together, the interrogatories, which were very easy
13:56:22 4 to answer. If counsel paid attention, which plaintiffs' counsel
13:56:32 5 did not pay attention, the amended complaint, then we follow
13:56:38 6 through, I ordered the answers on the 3rd. Really, the
13:56:46 7 interrogatories are a brief part of the Lone Pine Case Management
13:56:54 8 order that's, of course, been published. And then, the motion
13:57:02 9 started coming in in August to dismiss the lawsuit for the
13:57:04 10 failure of the plaintiffs to answer the interrogatories.
13:57:12 11 Plaintiffs' counsel have had over six months to answer the
13:57:14 12 interrogatories.

13:57:20 13 It appears that these folks had no guidance whatsoever
13:57:24 14 on answering the interrogatories. The answers do not give us any
13:57:36 15 information to determine who is suing for property damage, and if
13:57:42 16 they lived in Somerville, when they lived in Somerville, when the
13:57:46 17 symptoms came, who has personal injuries, who's a minor, who's a
13:57:52 18 major, who has limitations problems, what causes of action are
13:57:56 19 you actually suing. I love the one where everybody says -- gives
13:58:04 20 a post box number. You can't even tell if those people ever
13:58:08 21 lived in Somerville. Then, plaintiff, apparently, found out that
13:58:16 22 30-something people never did live in Somerville who were
13:58:18 23 plaintiffs in this lawsuit. Stock answers to 3, 4 and 5. Stock
13:58:26 24 answers prepared by the lawyers, not the parties, that gives no
13:58:32 25 information whatsoever so that I can see if I can carry a mass

13:58:36 1 tort claim.

13:58:42 2 What injuries are you claiming? One of them says AIDS.
13:58:52 3 You've got all sorts -- and most people don't say anything. Most
13:58:54 4 people say, we can't say anything until discovery. They don't
13:59:00 5 even know what discovery is. Another group of people who didn't
13:59:04 6 have any injuries at all were plaintiffs. What time? What time
13:59:16 7 are we talking about so we could see if there's a lawsuit at all.
13:59:22 8 It's amazing how many. Five-hundred people, a period of exposure
13:59:28 9 coincides with period that plaintiff resides in proximity of the
13:59:30 10 plant.

13:59:32 11 So 16 months later, I have a lawsuit and I blame the
13:59:38 12 plaintiffs' counsel. I gave them every opportunity to try to
13:59:46 13 prosecute this case. And surely it was work to work with the
13:59:50 14 people who you represent so that they could have adequate answers
13:59:52 15 under the federal rules to the interrogatories so we could see if
13:59:56 16 we could move this case, but we cannot. I know less now about
14:00:02 17 this case, with all of this paper, than we had in the beginning.

14:00:10 18 So I'm going to give the plaintiffs 30 days. You can
14:00:14 19 move individual cases at \$350 under this docket. At the end of
14:00:22 20 30 days, all individuals who have not severed out and started a
14:00:28 21 new file suing the appropriate people with an appropriate
14:00:32 22 complaint so that they can move their cases, I will dismiss this
14:00:36 23 lawsuit.

14:00:42 24 Now, you have whatever right you wish to make a record.
14:00:44 25 You can proceed to make a record. I cannot -- I do not have

14:00:48 1 anywhere close the information to group these people to have a
14:00:54 2 specimen trial as you wish. There's just no way to proceed in
14:00:58 3 this mass of no information. The only way to proceed is to have
14:01:06 4 individual cases, just as Beaumont ordered several years ago, and
14:01:14 5 I tried to avoid that problem because I know the plaintiffs'
14:01:16 6 counsel has a problem like that. But when you don't work with
14:01:20 7 the Court in answering interrogatories that the Court drew so
14:01:24 8 that we could see if this case was going to maintain, I've got to
14:01:28 9 too many cases on this docket.

14:01:30 10 This docket happens to be the heaviest civil docket in
14:01:32 11 the country. In the country. And I don't have time to fool with
14:01:40 12 these cases and fool with lawyers who won't advise their clients
14:01:46 13 on how to answer interrogatories so that these parties could have
14:01:50 14 enough information to do it.

14:01:52 15 MR. WRIGHT: Your Honor, may we just have a moment to
14:01:54 16 confer before we respond?

14:01:56 17 THE COURT: You may. I would dismiss this case today
14:01:58 18 if I wasn't worried about the statute of limitations problems.
14:02:02 19 The only reason I'm not dismissing this case for the absolute
14:02:06 20 failure to provide information on those interrogatories that were
14:02:10 21 designed to see if this case could float is that if I did it,
14:02:18 22 then the malpractice claims would outnumber the claims that would
14:02:22 23 come in, because many people lose their cause of action because
14:02:26 24 there would be no tolling of the causes of the statute of
14:02:30 25 limitations; that's why I'm giving everybody 30 days. But you

14:02:34 1 have the right to chat, and I'll give you -- ten minutes? Is
14:02:38 2 that all right?

14:02:38 3 MR. WRIGHT: Yes, your Honor.

14:02:40 4 THE COURT: All right. Ten minutes.

14:16:18 5 (Recess.)

14:16:26 6 THE COURT: Yes, sir.

14:16:28 7 MR. HANKINS: Your Honor, I apologize to the Court for
14:16:32 8 totally misunderstanding what the Court did. And it wasn't like
14:16:36 9 us, too, but we thought in working with these people, we sat down
14:16:38 10 with them, we went through interrogatories with them personally.
14:16:42 11 We talked to them about the interrogatories, and these are the
14:16:46 12 responses that we came up with. We don't even know all the
14:16:50 13 chemicals that the defendants -- I mean, the plaintiffs were
14:16:54 14 exposed to. We did the very, very best.

14:16:58 15 THE COURT: There was no question about that. The
14:17:00 16 question was, where did you live.

14:17:04 17 MR. HANKINS: That was on the responses, your Honor.

14:17:06 18 THE COURT: When did -- many of those responses are
14:17:10 19 post office addresses.

14:17:10 20 MR. JEFFERSON: But, Judge, we had -- Judge, we don't
14:17:14 21 know between going to Map Quest, between talking to the people,
14:17:18 22 between using the technology trying to pinpoint where people
14:17:26 23 live. These people are out in -- many of them were out in the
14:17:28 24 middle of nowhere, Judge.

14:17:30 25 MR. HANKINS: That's true.

14:17:32 1 THE COURT: So what? You filed a lawsuit for them and
14:17:36 2 you're required to answer the interrogatories. It wasn't easy,
14:17:40 3 but it's rarely easy when you get 500 people.

14:17:46 4 MR. HANKINS: Judge, if we --

14:17:48 5 THE COURT: No, no, no. I'm going to give you time.

14:17:50 6 MR. JEFFERSON: I understand, your Honor.

14:17:50 7 THE COURT: What injuries do you have?

14:17:54 8 MR. HANKINS: They were listed on the symptom survey.

14:18:00 9 The affidavits of our experts point to the injuries that they
14:18:04 10 suffered that can be tied in with the chemicals that the
14:18:06 11 defendants contaminated the entire community with, your Honor.

14:18:16 12 MR. JEFFERSON: Judge -- I mean, Judge, we really did
14:18:20 13 act in good faith in trying to -- trying to answer the Court's
14:18:26 14 questions.

14:18:28 15 THE COURT: All right. The Court can't make hides nor
14:18:30 16 tails of it. I can't even classify groups of plaintiffs. I
14:18:34 17 can't classify those groups that may or may not have property
14:18:38 18 damage, those groups that may or may not have any injuries, those
14:18:42 19 groups that may or may not have serious injuries. I can't --
14:18:48 20 those that may be minors, those that have statute of limitations
14:18:52 21 defenses.

14:18:54 22 MR. JEFFERSON: Judge --

14:18:56 23 MR. HANKINS: The age was on there, your Honor, for
14:18:58 24 every one of the plaintiffs.

14:18:58 25 THE COURT: Age?

14:19:02 1 MR. JEFFERSON: See, Judge, I just think that, you
14:19:04 2 know, we really did do a poor job of understanding what the Court
14:19:06 3 wanted in the answers.

14:19:08 4 THE COURT: No, you didn't. You understood what the
14:19:08 5 Court entered. You wanted to maintain a lawsuit with 600
14:19:12 6 plaintiffs, and I told you there's no way to do that unless we
14:19:18 7 have the information so that we can see what the situation --

14:19:22 8 MR. HANKINS: Well, we weren't trying to maintain a
14:19:24 9 lawsuit with 600 plaintiffs, your Honor, if it wasn't necessary.
14:19:26 10 We intend to call out people who don't belong in the lawsuit. We
14:19:32 11 were doing that. We've been doing that all along. We've also
14:19:36 12 been trying to indicate who owns property. That was responded to
14:19:40 13 in there. We indicated that the chemicals that they were exposed
14:19:44 14 to, we can't identify which defendant they belong to because we
14:19:50 15 don't have any discovery from any of the defendants. Nothing.

14:19:54 16 MR. JEFFERSON: And then, Judge, on the medical
14:19:56 17 condition we might have included things that the defendants say
14:19:58 18 cannot be related to this. But out of abundance of caution, we
14:20:02 19 just feel like we're going to provide information on all of --
14:20:04 20 you know, tell us the conditions that you had. And that's the
14:20:08 21 purpose of attaching affidavits from the experts, Judge, is show
14:20:12 22 -- and then, the experts say these conditions --

14:20:14 23 THE COURT: I'm not interested in the experts. That
14:20:16 24 comes later. I'm interested in the maintenance of the lawsuit.
14:20:20 25 Question 7 asks for the date and ownership of the plaintiffs'

14:20:24 1 addresses. You get post office boxes. Most of them don't even
14:20:32 2 check "owner." You don't know if they own the property or not,
14:20:36 3 so you can't confirm anything. They don't have the time frames.

14:20:46 4 Not only I but all of these defendants who have a right
14:20:50 5 to a prompt trial, they don't have any more information than I
14:20:58 6 do. Now, they may on liability, but we're not to liability.
14:21:02 7 We're on whether or not we got enough infor -- I mean, if they
14:21:08 8 came in here for sanctions for the answering of these
14:21:12 9 interrogatories, I would give it to them.

14:21:16 10 MR. HANKINS: Your Honor, you mentioned the fact that
14:21:20 11 we give post office boxes. This is a rural area. Many of these
14:21:24 12 people do not have street addresses. We tried to identify it as
14:21:30 13 close as we possibly could with regard to that.

14:21:34 14 THE COURT: But they have to live in the immediate
14:21:38 15 area. If I was going to draw a circle to say, these are -- this
14:21:44 16 is the area that the plaintiffs could live in after some
14:21:48 17 discovery, you can't do it. I don't know where these people
14:21:52 18 live.

14:21:52 19 MR. JEFFERSON: Judge, what we attempted to do was to
14:21:54 20 identify -- and I worked with this with my paralegal. We tried
14:21:58 21 to identify crossroads, like someone would give us -- well, they
14:22:04 22 gave us a P.O. Box, and we're trying to find out where is that,
14:22:06 23 where are you? And so, we've tried to identify crossroads that
14:22:10 24 would be nearest within four miles of 36 or within four miles of
14:22:16 25 FM 720.

14:22:20 1 But, Judge, what we would do is to pray to the Court --
14:22:24 2 I mean, if we have failed, as the Court has so determined, to
14:22:30 3 this point, I mean, many --

14:22:34 4 THE COURT: Sixteen months is long enough. Six months
14:22:36 5 is long enough. You've culled through, you've decided which ones
14:22:42 6 you want to sever out, pay the fee, and we'll proceed along.

14:22:46 7 Each one of these people have individual claims, in any event --

14:22:52 8 MR. HANKINS: Can we group family units together, your
14:22:54 9 Honor?

14:22:56 10 THE COURT: I can't control what you file. The only
14:22:58 11 thing that I control is that I'm not -- if I just dismiss this
14:23:02 12 lawsuit for the failure of progress, the statute of limitations
14:23:08 13 could run on 590-something people, and I'm not going to do that.
14:23:14 14 I'm going to allow you 30 days to decide which one of those
14:23:16 15 people, if not all of them, to put an individual case, and then,
14:23:22 16 their statute of limitations have run; then, we'll run this just
14:23:26 17 like we do any other case. You can have individual
14:23:28 18 interrogatories.

14:23:30 19 You could have a combination of common discovery, if
14:23:36 20 you wish. But at least the defendants and the Court would get
14:23:40 21 sufficient information to know what these cases are about. I do
14:23:44 22 not have this information, and there's no way I can organize
14:23:48 23 them.

14:23:48 24 MR. HANKINS: Can we get some help from the Court in
14:23:50 25 identifying chemicals that the defendants have produced so we can

14:23:54 1 have our individual clients say, yes, we believe that they
14:23:58 2 contaminated --

14:24:00 3 THE COURT: You don't need that. You need the person
14:24:02 4 to say, I lived in Somerville in these years, or I lived near it,
14:24:08 5 or I lived a mile from the plant, or the railroad track, or
14:24:12 6 whatever, and in 1992, I started having nosebleeds and I went to
14:24:18 7 the doctor. I own the property. I can't sell it. You need
14:24:26 8 answers like that. That's what you need. You don't have to try
14:24:28 9 to make 590 people expert witnesses on what caused anything.
14:24:34 10 That discovery would come later. We just needed the information.
14:24:38 11 Now, you know, this started out as a -- where you try --

14:24:46 12 MR. HANKINS: Class action.

14:24:46 13 THE COURT: Yeah, a class action, but you can't
14:24:48 14 maintain it as a class action. I tried to see if we could
14:24:52 15 maintain it as a mass tort, but you can't. You just can't in a
14:24:56 16 mass tort situation where you've got a medical device, you know
14:25:02 17 the date the medical device went in, you know the date that the
14:25:06 18 doctor's visit. There are a lot of things that are in common
14:25:10 19 that you can calculate. But there's no way to calculate this.
14:25:14 20 There's not going to be -- you're going to have to do that
14:25:16 21 individual discovery, anyway, eventually.

14:25:20 22 MR. JEFFERSON: Judge, one thing that's happening now,
14:25:22 23 the Railroad defendant had, in fact, been out contacting some of
14:25:26 24 our clients. They've received an order from the state to
14:25:30 25 actually go out onto the property and start doing some on-site

14:25:34 1 testing, which would show that there is even limited information
14:25:38 2 with regard to the state as to exactly which chemicals are out
14:25:44 3 and exactly to the extent -- as we told you before we filed this
14:25:50 4 suit, we did some testing in order to identify chemical compounds
14:25:56 5 that were related to these specific defendants that then led to
14:26:00 6 us bringing the suit, in the first place.

14:26:04 7 And the Court has enlightened us here today
14:26:14 8 substantially to the extent, your Honor, of the specificity of
14:26:24 9 the type of information that the Court was seeking in the seven
14:26:34 10 interrogatories that was presented and --

14:26:40 11 THE COURT: This is a standard set of interrogatories
14:26:44 12 that each defendant would have filed with their answer in state
14:26:48 13 court. In federal court you have to wait 32 days on Rule 26,
14:26:52 14 then they would have filed it. That's the information they're
14:26:54 15 entitled to receive. They haven't received it yet, counsel.

14:26:58 16 MR. JEFFERSON: But, Judge, it's a --

14:27:00 17 THE COURT: There's no way to proceed with this number
14:27:02 18 of people. And we've wasted way too much time. We've wasted all
14:27:08 19 of the expense of the defendants. We've wasted your time, and
14:27:10 20 you've wasted your clients' time. I'm in no better position now
14:27:16 21 than I was when you filed this lawsuit.

14:27:18 22 MR. HANKINS: May I ask the Court a question?

14:27:20 23 THE COURT: Sure.

14:27:20 24 MR. HANKINS: How does the Court want us to identify
14:27:22 25 where these people own their property because we've done the very

14:27:26 1 best that we can?

14:27:28 2 THE COURT: Well, I don't know, but they're going to
14:27:30 3 take a deposition. They don't have to take a deposition in every
14:27:34 4 case. They can get that in interrogatory: Where did you live?
14:27:38 5 When did you live there? How did you do that? I mean --

14:27:40 6 MR. HANKINS: No. That's not what I'm talking about,
14:27:44 7 your Honor. When they say, post office box or rural route,
14:27:46 8 that's the only address they have. How else can we identify it
14:27:50 9 for the Court and for the defendants?

14:27:52 10 THE COURT: Well, what are you suing for, a plant? Is
14:27:56 11 it a plant?

14:27:58 12 MR. JEFFERSON: Yes, Judge.

14:28:00 13 MR. HANKINS: Yes, your Honor.

14:28:02 14 THE COURT: I would start off by saying, I'm
14:28:04 15 one-quarter a mile away, or I'm 400 feet away, or I'm within a
14:28:08 16 mile of it, or what --

14:28:12 17 MR. JEFFERSON: Bu, Judge, that's what I'm saying. We
14:28:14 18 totally misunderstood. We thought by providing --

14:28:16 19 MR. HANKINS: The address.

14:28:16 20 MR. JEFFERSON: -- the mailing address of where people
14:28:18 21 receive their mail and where they all are, by providing that
14:28:22 22 information, the defendants could go to the records and say,
14:28:24 23 okay, here's P.O. Box 720.

14:28:28 24 THE COURT: They don't have to. All they have to do is
14:28:30 25 give an interrogatory to you. You've got to answer these,

14:28:34 1 anyway. But, counsel --

14:28:36 2 MR. HANKINS: One another question.

14:28:38 3 THE COURT: -- don't push on my intelligence.

14:28:40 4 MR. JEFFERSON: I'm not, your Honor.

14:28:42 5 THE COURT: This is the information I told you you're
14:28:44 6 going to have to try to maintain this case that you wanted to.
14:28:46 7 We had to have this information, so all of these motions that
14:28:52 8 were coming that I put on the shelf, I've got to rule on these
14:28:56 9 motions. And you don't have the information to add to answer it
14:29:04 10 yet.

14:29:04 11 MR. JEFFERSON: Well, Judge, can't you give us one
14:29:06 12 additional bite at the apple? I mean, can you do that? Can you
14:29:10 13 give us one additional bite? Judge, can you give us one
14:29:14 14 additional bite at the apple to try to get this right? That's
14:29:16 15 what we would pray to the Court on behalf of these clients. One
14:29:22 16 additional bite at the apple to get the answers to the Court in a
14:29:26 17 manner that the Court has instructed us to do it.

14:29:30 18 We thought by providing the address, the P.O. Box, it
14:29:32 19 was sufficient. We know now it needs to be more detailed
14:29:36 20 information that needs to be distance from the site.

14:29:38 21 THE COURT: Forget about the residence. Four, 5, 6, no
14:29:48 22 one attempted to answer those questions with any type of
14:29:50 23 specificity, and that was the whole heart of everything. And,
14:30:00 24 counsel, I've got confidence in -- y'all are smart people. You
14:30:04 25 knew the information that we had to have if we were going to try

14:30:08 1 to figure out how to try a lawsuit with 500-plus persons.

14:30:16 2 There's no way to classify them. There's no way -- there's no
14:30:18 3 maneuvering --

14:30:20 4 MR. JEFFERSON: Judge, can you give us one more bite at
14:30:24 5 the apple?

14:30:24 6 THE COURT: Y'all have a seat. Let me hear from the
14:30:26 7 defense.

14:30:26 8 MR. HANKINS: Your Honor, I have just one question.

14:30:28 9 THE COURT: Yes, sir.

14:30:28 10 MR. HANKINS: For the people that we don't convert,
14:30:30 11 will they be dismissed without prejudice?

14:30:32 12 THE COURT: Yes. Oh, yes. There's no question about
14:30:34 13 that.

14:30:38 14 All right. Anybody want to speak from the defense
14:30:40 15 side?

14:30:54 16 MR. KURFIRST: Thank you, your Honor. Len Kurfirst on
14:30:56 17 behalf of Koppers.

14:30:58 18 I think the Court had articulated our position in terms
14:31:02 19 of our briefs that we filed. We'll stand on what the briefs say.
14:31:08 20 I think, really, the relief that we were looking for is very
14:31:12 21 similar to the type of relief that was provided in the Greene vs.
14:31:14 22 Mobil Oil case that we've cited many times beforehand. In that
14:31:18 23 case, Judge Cobb was also faced with a similar situation of
14:31:22 24 trying to manage a case like this, and basically came down to the
14:31:24 25 same conclusions. In fact, the types of interrogatories that he

14:31:28 1 had asked -- in fact, Mr. Hankins was involved in that case, and
14:31:34 2 asked them to provide those types of responses, almost identical
14:31:38 3 to the types of questions, interrogatories that this court had
14:31:40 4 proposed. Similar in that case, they went unanswered, and those
14:31:44 5 cases were dismissed, as well. I think that is the type of
14:31:48 6 relief that we're seeking here.

14:31:50 7 With respect to the personal injury claims, we have no
14:31:56 8 information whatsoever that allows us to distinguish which cases
14:31:58 9 would apply to which defendants. For example, my client didn't
14:32:02 10 even come into the picture until 1995, which is when they
14:32:06 11 acquired the plant.

14:32:06 12 THE COURT: I understand the importance of the --

:32:10 13 MR. KURFIRST: And so, as we see, as you can imagine,
14:32:12 14 your Honor, is that, you know, when we got a litany of virtually
14:32:14 15 a whole lifetime worth of illnesses and somehow, you know, we're
14:32:18 16 supposed to -- it's supposed to be up to the defendants to decide
14:32:20 17 which one of those many claims, you know, somehow apply to which
14:32:24 18 defendants. The problems that we ran into with respect to the
14:32:28 19 many different types of illnesses that clearly could not have
14:32:30 20 been related to any sort of chemical exposures, whether it be
14:32:34 21 HIV, Alzheimer's, broken feet, broken back, those sorts of things
14:32:38 22 that, again, we -- you were saying earlier, we came in today, and
14:32:44 23 we're no better off than we were back on March 31st.

14:32:46 24 Some people lived in Somerville -- I mean, some people
14:32:50 25 never lived in Somerville. Many people had indicated that they

14:32:52 1 had never worked in Somerville. Many said that they didn't even
14:32:56 2 have any injuries, and yet, somehow it's up to the defendants to
14:32:58 3 try to sort through all that. You can't do that from the
14:33:04 4 defendants' perspective.

14:33:04 5 With respect to the chemicals, if they -- in good faith
14:33:06 6 they're saying that they have injuries that are related to penta,
14:33:10 7 then they should say that. If they think that it's creosote,
14:33:12 8 they should say that, but not all the defendants here dealt in
14:33:16 9 creosote. In fact, the majority of them did not. My client
14:33:20 10 clearly, in 1995 onward, did some treatment with creosote, but I
14:33:26 11 can tell you that we never dealt with penta. We never dealt with
14:33:28 12 CCA. And so, it was very important to know whether or not any of
14:33:32 13 these claims of alleged injuries are related to which chemicals.
14:33:36 14 And again, we see nothing that allows us to try to figure out
14:33:38 15 which way we're going on that.

14:33:42 16 Misrepresentation claims, warranty claims, those are in
14:33:46 17 the complaints, and those are just totally ignored. In other
14:33:48 18 words, you know: What are the alleged injuries with the
14:33:50 19 misrepresentations? What are the alleged injuries with respect
14:33:54 20 to the warranties? What were the statements made, to whom, when?
14:33:56 21 None of that information. How do you possibly defend a
14:33:58 22 misrepresentation case or a warranty claim when you don't even
14:34:02 23 know what it is that's being alleged? We can't do that.

14:34:06 24 The property damage claim. Once again, in our earlier
14:34:08 25 briefs, we had mentioned, I think, the Schneider decision, which

14:34:12 1 is going to be controlling in this case, and how important it is
14:34:14 2 to know not only who owned the property, when they owned the
14:34:18 3 property, and then, when they're alleging the property was
14:34:20 4 damaged. It's very basic information that they have not told us.
14:34:26 5 Nowhere is there any suggestion in terms of when did that
14:34:28 6 property first become damaged so that we can determine whether or
14:34:32 7 not it would be dismissed under Schneider as a result of being a
14:34:36 8 permanent nuisance.

14:34:36 9 What they do allege is they say, well, either they
14:34:38 10 owned it or maybe they got some sort of assignment of a right to
14:34:44 11 pursue the cause of action later. But, of course, once again, in
14:34:48 12 order to figure out if there's any validity to that sort of
14:34:50 13 assertion, you'd have to know who was the owner, and then, was
14:34:54 14 there any type of information, or was there any sort of
14:34:56 15 assignment of claim made. And again, none of that is provided
14:34:58 16 anywhere.

14:35:00 17 It's my understanding with respect to the addresses,
14:35:04 18 which are very important to try to figure out proximity to the
14:35:06 19 plant, where they lived, that even though many people may have
14:35:10 20 rural numbers in Texas, especially in these rural areas, they
14:35:12 21 have now emergency response addresses, or emergency response
14:35:16 22 location addresses, so that the emergency crews know where to go
14:35:22 23 just for that reason. So for them to come in and say, well, all
14:35:26 24 we have are post office box numbers, I don't think that that's
14:35:28 25 the way it's done now. But again, that's my understanding of the

14:35:32 1 facts, your Honor.

14:35:32 2 Again, as far as the affidavits that were filed, I
14:35:38 3 don't think they have any relevancy to the issues which are
14:35:40 4 before us today, which is that there's no way for the defendants
14:35:44 5 to figure out what it is that's being alleged with respect to
14:35:48 6 each particular defendant, at which time. And those are all
14:35:50 7 critical issues that I think will allow us -- once that
14:35:52 8 information is provided to us, will allow us, then, to whittle
14:35:56 9 down which claims are against which defendants. But until we get
14:36:00 10 that information, we can't possibly do that.

14:36:04 11 So we would certainly go along with what the Court did
14:36:06 12 in Greene and in Mobil Oil and with the proposed order that the
14:36:10 13 Court has at this point in time. Thank you, your Honor.

14:36:18 14 THE COURT: Any other on the east side of the room?

14:36:24 15 MS. SPACAPAN: Your Honor, Lise Spacapan for Dow
14:36:28 16 Chemical.

14:36:28 17 As I understand it, your Honor is preparing to order
14:36:30 18 that they have 30 days to file a claim that has the specificity
14:36:36 19 contemplated in the Court's prior orders or lose their claim but
14:36:42 20 without prejudice. Is that --

14:36:44 21 THE COURT: No --

14:36:44 22 MS. SPACAPAN: No. Okay.

14:36:46 23 THE COURT: -- because I didn't think because of
14:36:46 24 holding the defendants in this lawsuit for well over a year and
14:36:54 25 over six months to get these answers to interrogatories, I didn't

14:37:00 1 think it was appropriate to ask the defendants to stipulate that
14:37:06 2 the time from June 16, 2005 to the time I dismissed would be
14:37:16 3 tolling on the statute of limitations. If I had that authority,
14:37:20 4 I would do it. And then, counsel could file whatever lawsuit or
14:37:26 5 lawsuits they felt that they should do. But I don't have that
14:37:32 6 authority, and I decided I could not, after 16 months, ask that
14:37:38 7 of the parties.

14:37:40 8 So I've decided that I will keep this lawsuit open, and
14:37:44 9 anybody who wishes to sever out of it in the next 30 days, and
14:37:50 10 pay the filing fee, and have an individual lawsuit here can do
14:37:54 11 so. Or if they want to file it in another jurisdiction, they
14:38:04 12 could ask for a transfer, and I would transfer it to whatever
14:38:10 13 jurisdiction that they wish. But they will be individual cases
14:38:14 14 as we proceed.

14:38:18 15 MR. HANKINS: Your Honor, I just want to clarify one
14:38:20 16 thing that the gentleman talked about in the Green case. The
14:38:24 17 interrogatories did not go unanswered in that case. What
14:38:28 18 happened was the plaintiffs' attorneys decided that because they
14:38:30 19 had to pay the filing fee for a number of plaintiffs, they were
14:38:36 20 not going to carry the case forward. That's what happened.

14:38:38 21 THE COURT: You told me that the last time and that's
14:38:40 22 why I really --

14:38:42 23 MR. HANKINS: I just wanted to make sure that that was
14:38:44 24 clear because he indicated that we didn't answer it, and that's
14:38:46 25 incorrect.

14:38:46 1 THE COURT: No. I knew that money was a major factor,
14:38:52 2 and it's a major factor in this lawsuit. The Court's not blind
14:38:56 3 to that fact. That's why I've held up for as long as I have.

14:39:00 4 MR. HANKINS: The other thing that we did show was the
14:39:04 5 date of birth on our document. We also showed that the penta,
14:39:10 6 creosote, arsenic and extender oil, all of which -- all of these
14:39:16 7 defendants were engaged in making, or had some culpable action in
14:39:22 8 producing, were a part of the creosote mix. And we understand
14:39:30 9 that there were people who showed that they owned property. When
14:39:34 10 they owned it, we need to find out for the Court and that's
14:39:38 11 important. Emergency response address, many of the people gave
14:39:42 12 us addresses that they claim were emergency response, but we will
:39:46 13 check and find out to make sure.

14:39:50 14 MR. JEFFERSON: And so, Judge, that, you know, that
14:39:52 15 goes back to -- I know the Court has made up its mind on this,
14:40:00 16 but goes back to the request that the Court allows, you know,
14:40:08 17 like I said, one last bite at the apple to get the specific
14:40:14 18 information that the Court was seeking in these interrogatories
14:40:18 19 to these defendants, Judge.

14:40:20 20 THE COURT: The very fact that we're here that the --
14:40:30 21 this isn't an octopus, it's a millipede that's as big as an
14:40:36 22 octopus -- shows the difference in the variety of injuries,
14:40:46 23 causes of action, parties. There's not enough information to
14:40:58 24 even get to the first step here. You might work forever and not
4:41:02 25 get to the first step. That was my fear when we started out.

14:41:08 1 But I've given too much time. I've got responsibilities to all
14:41:14 2 parties, not just the plaintiffs. I've given the plaintiffs 16
14:41:16 3 months, and I'm not going to change my mind. Yes, sir.

14:41:18 4 MR. WRIGHT: I understand, your Honor. Could I just
14:41:20 5 make sure that we're clear on going forward? So we have 30 days
14:41:28 6 from today, I assume.

14:41:30 7 THE COURT: Well, 30 days from the day I enter the
14:41:32 8 order. You'll actually have more than 30 days.

14:41:34 9 MR. WRIGHT: Okay. And then, the issue is for the
14:41:36 10 cases that we want to maintain here, we pay separate filing fee.

14:41:44 11 THE COURT: For each case.

14:41:46 12 MR. WRIGHT: Okay.

14:41:46 13 THE COURT: But you need to be careful. I would also
14:41:50 14 file them here and then, ask for a transfer if you're going to
14:41:54 15 transfer them to another court because you need that tolling. If
14:42:00 16 you just file it in another court, I don't believe that there's
14:42:04 17 going to be tolling because I'm going to dismiss without
14:42:06 18 prejudice.

14:42:06 19 MR. WRIGHT: I understand, your Honor.

14:42:08 20 THE COURT: So you're going to need to file it here.
14:42:10 21 And if you want a transfer to another jurisdiction, I will do
14:42:14 22 that.

14:42:14 23 MR. WRIGHT: Okay.

14:42:14 24 THE COURT: Because it wouldn't have been filed here in
14:42:16 25 the first place. But if you want to keep it here, that's your

14:42:20 1 business, too.

14:42:22 2 MR. WRIGHT: Now, are you saying that you don't want to
14:42:24 3 transfer the single action. You want to -- you want us to
14:42:30 4 convert them to individual actions first and then, transfer them?

14:42:34 5 THE COURT: Yes, sir. I think that's the only safe way
14:42:36 6 to do it.

14:42:38 7 MR. WRIGHT: Okay. And then, for the cases that we do
14:42:40 8 not do that process with.

14:42:46 9 THE COURT: I'm going to dismiss this lawsuit for the
14:42:48 10 failure to proceed and answer those interrogatories without
14:42:52 11 prejudice.

14:42:52 12 MR. WRIGHT: Without prejudice.

14:42:54 13 THE COURT: Yes, sir.

14:42:54 14 MR. WRIGHT: Thank you, your Honor.

14:42:56 15 THE COURT: All right. Everybody got their signal
14:42:58 16 straight? All right. Thank you, counsel.

17 (End of proceedings.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Official Court Reporter, United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 16th day of October, 2006.

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